

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 665 OF 2022

(Against the Order dated 02/08/2022 in Complaint No. 201/2018 of the State Commission
Maharashtra)

1. SEVANTILAL J. PAREKH

BHARATIYA BHAVAN, 5TH FLOOR, 72, MARINE DRIVE,
MUMBAI-400020

.....Appellant(s)

Versus

1. UNITED INDIA INSURANCE COMPANY LIMITED

"VULCAN INSURANCE BUILDING,, FLOOR NO. 3, VEER
NARIMAN ROAD, CHURCHGATE, MUMBAI,
MAHARASHTRA-400020

.....Respondent(s)

BEFORE:

HON'BLE DR. SADHNA SHANKER, PRESIDING MEMBER

FOR THE APPELLANT : MR. MANOJ KHATRI, ADVOCATE (PHYSICAL)

FOR THE RESPONDENT : MR. ANSHUL KUMAR, PROXY ADVOCATE (PHYSICAL)

MR. ABHISHEK GOLLA, ADVOCATE

WITH AUTHORITY LETTER.

Dated : 31 May 2024

ORDER

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (corresponding section 51 of the Consumer Protection Act, 2019) in challenge to the Order dated 02.08.2022 passed by the State Consumer Disputes Redressal Commission, Maharashtra (hereinafter to be referred to as 'State Commission') in complaint No. 201 of 2018 whereby complaint was dismissed.

2. Heard learned counsel for the appellant (hereinafter referred to as the 'complainant') and the learned counsel for the respondent (hereinafter referred to as the 'insurance company') and perused the record including the State Commission's impugned Order dated 02.08.2022 and the memorandum of appeal.

3. The brief facts of the case are that the complainant, who being the Chairman of the United Shippers Ltd. used to travel different countries frequently, had taken Overseas Medical CFT (Corporate Frequent Traveller) policy from the insurance company for the period from 18.01.2016 to 17.01.2017 and from 18.01.2017 to 17.01.2018 and the policy came to be renewed subsequently. It is contended that prior to the renewal of the policy, the complainant had undergone a medical test and he was declared fit for obtaining the insurance policy. The complainant visited New York and Washington DC and other places in United States of America. There, the complainant suffered drop in the heart rate and went to the

emergency room where he was examined by doctors of Morristown Medical Centre, Morristown, New Jersey and was diagnosed with conduction disturbance in the ECG of the complainant for which implantation of an artificial pacemaker was a specific treatment which was considered to be life-saving. The complainant then underwent emergency surgery at Morristown Medical Centre for implantation of artificial pacemaker and he was discharged on 11.06.2016. The complainant alleged that he then informed the same to the TPA (Third Party Administrator) for payment from insurance company regarding expenses incurred by the complainant but the insurance company rejected their liability by stating that the complainant has not disclosed his ailments including angioplasty underwent by the complainant in the year 2002 and further, the cardiac pacemaker implantation was a pre-existing condition and was not covered under the policy. The complainant then gave reply on 07.07.2017 stating that the heart conduction system was caused due to sudden decrease in the heart rate and it is not related to any cardiac ailment, but, the explanation given by the complainant by various letters were not at all accepted. It is alleged that the complainant had made payment of US\$ 50332.75 to Morristown Medical Centre and informed about the same to the insurance company but the insurance company vide its letter dated 28.06.2017 repudiated the claim. It is alleged that the repudiation of the claim was on false ailment and baseless grounds, which amounted to deficiency in service on the part of the insurance company.

4. Being aggrieved by the repudiation of the claim made by the insurance company, the complainant filed a complaint before the State Commission.
5. The insurance company contested the complaint by filing written statement stating therein that the complainant was a policy holder of Overseas Medical CFT Policy and the same was for the period from 18.01.2016 to 17.01.2017 and the complainant had submitted proposal form on 29.12.2015 for issuance of Overseas Mediclaim CFT Policy and failed to disclose the correction information. He has not disclosed that he underwent angioplasty in the year 2002 and had only disclosed that he had done CABG in the year 1996. The insurance company has also taken a plea that the implantation which is pre-existing condition related to CABG in the year 1996, is not covered under the policy. It is further stated that there was no deficiency on the part of the insurance company.
6. The State Commission, vide order dated 28.07.2020, had dismissed the complaint.
7. Being aggrieved by the order of the State Commission, the complainant has filed the instant appeal before this Commission.
8. Learned counsel for the complainant has argued that the insurance company was well aware that the complainant had been suffering from Coronary Artery Disease for which he underwent CABG surgery in the year 1996 and not mentioning angioplasty procedure which the complainant underwent in the year 2002 is also related to the same disease, which does not amount to non-disclosure of material facts. He further argued that there is no nexus between the Coronary Artery Disease and the Arrhythmias for which the treatment is implantation of an artificial pace maker. He further argued that the complainant suffered problem of heart's conduction system due to sudden decrease in the heart rate and implanting of artificial pacemaker was an emergency procedure. He further argued that the artificial pacemaker implantation surgery and CABG are two different treatment procedures for

different conditions of the heart and are not related to each other. He further argued that there is no suppression or non-disclosure on the part of the complainant. In support of his contention, he placed reliance on the Hon'ble Supreme Court's decisions rendered in the case of **Sulbha Prakash Motegaonkar vs. Life Insurance Corporation of India, civil appeal no. 8245 of 2015, decided on 05.10.2015** and **Manmohan Nanda vs. United India Assurance Co. Ltd. & Anr., civil appeal no. 8386 of 2015 decided on 06.12.2021**. He also relied on the decision of this Commission in the case of Mukul Sonawala, consumer case no. 85 of 2011, decided on 29.09.2022, for the proposition that non-disclosure of angioplasty was not a material fact.

9. Learned counsel for the insurance company has argued that the angioplasty which took place in the year 2002 was not disclosed at the time of obtaining the policy. He further argued that in the proposal form, it has been clearly stated that the proposer has to disclose the entire medical history under PART II of the proposal form including previous treatment regarding "HEART AILMENT OF ANY KIND" but the complainant in the questionnaire has given an incorrect disclosure by stating the answer as 'NO' to the question no. 2. The complainant has not disclosed angioplasty treatment/operation underwent in year 2002 under disclosure B(1)(b). He further argued that the treatment of Cardiac Pacemaker Implantation arises from pre-existing illness and from the medical history, it could be clearly seen that the appellant had pre-existing heart illness. He further pointed out that the insured had at no stage brought any medical opinion on record to support the claim that pacemaker and CABG have no interconnection and are different ailments.

Further, he argued that all claims occasioned by, happening through or in consequence of any disease which is existing on the date of commencement of risk, are excluded from the scope of policy and condition in para 3 and 4 printed in the policy exclude all pre-existing conditions from coverage under the policy. It is further submitted that the claim for Cardiac Pace Maker Implantation which is a pre-existing disease, is not covered under the policy.

He placed reliance on the Hon'ble Supreme Court's decisions in the case of Branch Manager, Bajaj Allianz Life Insurance Company and Ors. Vs. Dalbir Kaur, civil appeal no. 3397 of 2020 decided on 09.10.2020 and Reliance Life Insurance Ltd. vs. Rekhaben Nareshbhai Rathod, civil appeal no. 4261 of 2019 decided on 24.04.2019 for the principle that a contract of insurance is one of utmost good faith and any non-disclosure that would influence the insurer's risk is a material fact. He also relied on the decision of this Commission in the case of Sushila Singh vs. Birla Sun Life Insurance Co. Ltd. & Anr., first appeal no. 2280 of 2018, decided on 29.09.2023.

10. The question for our consideration is as to whether the insurance company was justified in repudiating the claim of the complainant.

11. It is an undisputed fact that the complainant had obtained Overseas Mediclaim CFT Policy and the policy was valid when the complainant fell ill abroad and took the treatment there.

12. In so far as point of non-disclosure of the material fact is concerned, it is apposite to read the relevant part of the proposal form, which is reproduced below:

“II. MEDICAL HISTORY

A. TO BE COMPLETED BY THE PROPOSER

PLEASE ANSWER THE FOLLOWING QUESTIONS WITH ‘YES’ OR ‘NO’ (A DASH IS NOT SUFFICIENT) AND GIVE FULL DETAILS

1. Are you in good health and free from physical and mental disease or Infirmary
YES
2. Have you ever suffered from any illness or disease upto the date of mailing this proposal
NO”

It is also necessary to read the relevant part of OMP CFT Policy Schedule, which is as under:

Limit of Cover	Restricted Cover	Deductible Cover each Claim
(i) Illness (that is not pre-existing)	US@ 100,000	US\$ 100
(ii) Accident	US\$ 100,000	US\$ 100
Personal Accident	US\$ 25,000	NIL
Delay of Checked in Baggage	US\$ 100	12 hours
Personal liability	US\$200,000	US\$ 200 (TPPD onlyh)
Loss of Passport	US\$ 150	US\$ 30
Total Less of Checked in Baggage	US\$ 1000	NIL

13. From a perusal of the relevant part of the proposal form, it is seen that the complainant had answered in the negative to the question whether he suffered from any illness. Hence, it is clear that the complainant had not disclosed that he had undergone an angioplasty in 2002 while obtaining the insurance policy. Once the complainant had disclosed Coronary Artery Disease for which he underwent CABG surgery was conducted in the year 1996, there was no reason for him to not disclose the fact that he underwent angioplasty in 2002.

14. In our view, an angioplasty after a CABG is a material fact for an insurance company that is assessing risk. There is no merit in the argument that since CABG was disclosed, non-disclosure of angioplasty cannot be of much relevance. The angioplasty took place later in time and had to be disclosed in the spirit of utmost good faith and is definitely a material fact. The appellant has not disclosed a material fact at the time of taking the policy.

15. As regards there being a clear difference between the CABG and implantation of pacemaker, no medical opinion has been brought on record by the complainant. It is merely an assertion that the pacemaker implantation has no connection to his pre-existing cardiac condition. In the case of **Sulbha Prakash Motegaonkar vs. Life Insurance Corporation of India (supra)**, relied upon by the complainant, the insured died due to heart ailment, which had nothing to do with his lumbar spondylitis. This was a clear case of no connection between the two ailments. In our view, no clear disconnection has been made out between the

CABG and the pacemaker as they both are cardiac issues. Therefore, clause 3 and 4 of the policy clearly apply.

16. In view of the above discussion, we are of the view that the State Commission has passed a well-reasoned order and the same does not warrant any interference.

17. The first appeal, being bereft of merit, is dismissed.

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DR. SADHNA SHANKER
PRESIDING MEMBER